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FEDERAL COMMUNICATIONS COMMISSION
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Before the

**FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	PR Docket No. 93-144
)	RM-8117, RM 8030
Amendment of Part 90 of the)	RM-8029
Commission's Rules to Facilitate)	
Future Development of SMR Systems)	
in the 800 Mhz Frequency Band)	
)	
Implementation of Section 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

To: The Commission

Reply to Opposition of Nextel Communications, Inc.

In accordance with Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC"), Mobex Communications, Inc. ("Mobex") respectfully submits, through its attorneys, this Reply to the Opposition filed by Nextel Communications, Inc. ("Nextel") in the above-captioned proceeding.¹ Mobex is concerned that a few of the suggestions made by Nextel in its Opposition would be unduly detrimental to the interests of both incumbents and Economic Area ("EA") licensees. For this reason, Mobex welcomes the opportunity to submit this Reply.

¹ 47 C.F.R. § 1.429(f) (1996).

I. INTRODUCTION

1. Mobex is a licensee of both upper 200 channel block SMR licenses and Lower 230 channel block licenses located in various states throughout the nation. Mobex plans to participate in the upper 200 block SMR auction, and also anticipates being approached by auction winners who seek to relocate Mobex facilities. As a result, Mobex's interest in the above-captioned proceeding is best served by ensuring that both incumbents and EA licensees are treated fairly under the rules and are provided with ample notification of their respective rights and obligations vis-a-vis one another.

2. In the Second Report and Order, the Commission established certain rules governing the conduct of both incumbents and EA licensees.² Various parties filed Petitions for Reconsideration of that Second Order, to which Nextel then filed its Opposition.

II. REPLY

3. The Commission's rules permit an incumbent in the Lower 230 channel block to modify its system within the 18 dBu signal strength contour as long as the incumbent first obtains the consent of all co-channel licensees. The Industrial Telecommunications Association ("ITA"), however, proposed to permit the authorization of a frequency coordinator to substitute for a co-channel licensee's authorization. In this way, ITA asserts, co-channel licensees will not unreasonably prevent otherwise permissive modifications.

4. In general, Mobex agrees with ITA's suggestion that a frequency coordinator should be permitted to authorize an incumbent's permissive modification where the consent of a co-channel licensee is unreasonably withheld. Mobex cautions, however, that the incumbent should first attempt to obtain the consent of all co-channel licensees. Moreover, any co-channel licensee should be permitted to assert its rights against an incumbent by submitting to the FCC and the frequency coordinator contrary information concerning the likelihood of harmful interference. In all such instances, the FCC should have the final determination. In this way, the rights of the incumbent to permissibly modify its system will not be unreasonably blocked by a co-channel licensee, while at the same time that co-channel licensee will not be exposed to harmful interference in the event that a frequency coordinator erroneously or improperly determines that no such harmful interference would occur.

5. Mobex agrees with AMTA that for purposes of system modifications, the incumbent's maximum power and actual HAAT should be utilized. Nextel submits that, to the contrary, the actual power of the system should be considered. Mobex submits that

² Second Report and Order, FCC 97-223, released July 10, 1997.

some systems purposefully do not operate at maximum power all the time, so Nextel's suggestion would be counter-productive and difficult to effectuate.

6. Mobex opposes Nextel's suggestion that the Commission shorten the negotiation period. It is Mobex's belief that a two-year period is sufficient time to enable both parties to reach an agreement, but that a shorter time frame may not permit both incumbents and EA licensees enough time in which to engage in meaningful negotiations prior to involuntary relocation. This is especially true where incumbent's have a multistate presence.

7. Similarly, Mobex supports the Commission's current rule concerning reimbursement of recurring costs. Nextel believes that a three year period, rather than the current five-year period, would suffice. Mobex does not believe that such a short time frame would fairly reimburse incumbents for their added operational costs.

III. CONCLUSION

Overall, Mobex believes that the Commission's current rules serve to balance the interests of both incumbents and EA licensees. With the few suggested changes illuminated above, Mobex believes the Commission would enhance that regulatory framework. For the foregoing reasons, Mobex respectfully requests that the Commission act in accordance with this Reply.

Respectfully Submitted,

Mobex Communications, Inc.

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